

P.E.R.C. NO. 85-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-23

OCEAN TOWNSHIP EDUCATION ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, a request by the Ocean Township Board of Education to restrain binding arbitration of a grievance that the Ocean Township Education Association filed against the Board. The grievance concerns the Board's decision not to reappoint a teacher to the position of student council advisor and certain procedural objections to that teacher's evaluation. The Commission holds that the merits of a non-disciplinary reappointment may not be submitted to binding arbitration since the Board has a non-negotiable and non-arbitrable managerial prerogative to determine the criteria for teacher evaluation and the recipients of extra-curricular appointments. The Commission further holds, however, that the grievance is arbitrable to the extent it concerns the mandatorily negotiable subject of evaluation procedures.

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Appearances:

For the Petitioner, Shebell and Schibell, Esqs.
(Peter Shebell Jr., of Counsel)

For the Respondent, Klausner and Hunter, Esqs.,
(Stephen B. Hunter, Esq. Of Counsel)

DECISION AND ORDER

On October 24, 1984, the Ocean Township Board of Education (Board) filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks to restrain arbitration of a grievance filed by the Ocean Township Education Association (Association). The grievance concerns the Board's decision not to reappoint a teacher to the position of student council advisor and certain procedural objections to that teacher's evaluation.

Both parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's non-supervisory professional and clerical employees. The parties have entered a collective negotiations agreement effective from July 1, 1983 to June 30, 1986. That agreement contains a grievance procedure ending in binding arbitration.

Elizabeth Campanile, a teacher and an Association officer, was not reappointed to the extra-curricular position of student council advisor for the 1984-1985 school year. The Association filed a grievance alleging that Campanile was not properly evaluated as student council advisor; that her non-reappointment violated the parties' collective negotiations agreement as well as Board policy, and that the supervisor who recommended non-renewal was motivated by union animus. The Association specifically contends that the Board violated its alleged contractual obligations to give Campanile a written evaluation, a conference concerning her supervisor's observations of her, and an opportunity to respond to her negative evaluation. The Association seeks payment to Campanile of the stipend for student counsel advisor.

The Board denied the grievance and the Association then demanded binding arbitration. The instant petition ensued.

The Board argues that it has a non-negotiable and non-arbitrable managerial prerogative to determine the criteria for teacher evaluation and the recipients of extra-curricular appointments. See Wyckoff Bd. of Ed. v. Wyckoff Ed. Ass'n., 168 N.J. Super. 497 (App. Div.), certif. den. 81 N.J. 349 (1979). The Board also contends, citing Teaneck Bd of Ed. v. Teaneck Teachers Association, 94 N.J. 9 (1983) ("Teaneck"), that allegations of discrimination concerning managerial prerogatives may not be submitted to binding arbitration.

The Association contends that the instant grievance centers on procedures concerning evaluation and reappointments. Garfield Bd. of Ed., P.E.R.C. No. 85-49, 10 NJPER 639 (¶15307 1984) ("Garfield"). The Association disclaims any attempt to challenge the evaluation's substance, but does contend that an arbitrator could determine whether anti-union animus tainted the evaluation.

At the outset of our analysis, we set forth the limits of our scope of negotiations jurisdiction.

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.
Ridgefield Pk. Bd. of Ed. v. Ridgefield Pk. Ed. Ass'n., 78 N.J. 144 at 154 (1978)

Thus we do not decide the merits of the Association's contractual claims or the Board's contractual defenses.

In IFPTE, Local 195 v. State, 88 N.J. 383 (1982) ("Local 195"), the Supreme Court set forth the tests for determining whether a subject is mandatorily negotiable and arbitrable. The Court stated:

...a subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement

would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. Id. at 404-405.


We agree with the Association that the grievance is arbitrable to the extent it concerns the mandatorily negotiable subject of evaluation procedures. Garfield. See also Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Ass'n, 92 N.J. 38 (1982). However, we also agree with the Board that Teaneck bars binding arbitration over the merits of a non-disciplinary reappointment decision, regardless of whether it is allegedly motivated by discrimination. We will therefore permit arbitration to proceed on the issue of whether the Board violated contractual evaluation procedures, but restrain arbitration over the evaluation's substance or the motivation behind it.

ORDER

The Board's request for a permanent restraint of arbitration is granted to the extent the Association's grievance challenges the substance and motivation of the evaluation of Elizabeth Campinile as student council advisor. The request for a

restraint of arbitration is denied to the extent that the grievance asserts that the evaluation of Elizabeth Campinile violated any applicable evaluation procedures.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained. However, Commissioner Graves would find the entire grievance negotiable and arbitrable.

DATED: Trenton, New Jersey
May 15, 1985
ISSUED: May 16, 1985